

AMENDED IN ASSEMBLY MARCH 27, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2284

Introduced by Assembly Member Williams
(Principal coauthor: Senator Correa)

February 21, 2014

An act to add ~~Section 42450.5 to Article 1.5 (commencing with Section 42445)~~ to Chapter 8 of Part 3 of Division 30 of the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

AB 2284, as amended, Williams. Recycling: household batteries.

The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, requires retailers of rechargeable batteries to have in place a system for the acceptance and collection of rechargeable batteries.

This bill would enact the Primary Battery Stewardship Act and would define terms for purposes of that act. The act would require, by January 1, 2016, a producer of a primary battery or a primary battery-containing product to submit to the department a primary battery stewardship plan with regard to the primary batteries, or primary battery-containing products, that are sold, offered for sale, or distributed in the state by that producer. The bill would authorize a producer to elect to appoint a primary battery stewardship organization to submit a plan for those batteries or products. The bill would specify procedures for the development of the plan and the elements required to be included in the plan, including providing for a program that would achieve a specified collection rate. The bill would require the department to review

the plan and would deem the plan to be approved, unless the department makes a specified notification.

The bill would require a producer or the primary battery stewardship organization to implement the approved plan, including achieving the specified collection rate. The bill would prohibit a producer, retailer, or wholesaler, on and after July 1, 2016, from selling a primary battery or a primary battery-containing product, unless the battery or product is an approved product, as specified. The bill would require each producer or organization to prepare and submit to the department an annual report describing the activities carried out pursuant to the plan and would require the department to review the report. The department would be authorized to require a producer or organization to amend and resubmit a plan if the department notifies a producer or organization that the report does not meet certain requirements.

The bill would authorize the department to require a producer or organization submitting a plan to pay the department an administrative filing fee in an amount sufficient to cover the cost of the department's plan review, but not more than \$5,000. The bill would create the Primary Battery Stewardship Account in the Integrated Waste Management Fund and would require the fees be deposited into that account, for appropriation by the Legislature to the department, to cover the department's cost of plan review.

The bill would provide for the imposition of administrative civil penalties upon a producer that is in violation of the act or upon a wholesaler or retailer selling a primary battery or battery-containing products in violation of the act. The bill would create the Primary Battery Stewardship Penalty Subaccount in the Integrated Waste Management Fund and would require the penalties be deposited into the subaccount.

The bill would also allow a producer or organization that is implementing a plan and incurring specified costs to bring a civil action to recover costs, damages, and fees from another producer for failure to comply with the act's provisions.

The bill would declare that the act fully occupies and preempts the entire field of the stewardship of primary batteries and primary battery-containing products and would prohibit a city, county, or district, including a chartered city or county, from adopting or enforcing an ordinance that regulates the disposal, collection, and recycling of primary batteries or requires reporting by producers or primary battery stewardship programs.

The bill would authorize the department to adopt regulations to create an extended producer responsibility model for single-use primary household batteries and to seek the input from specified entities when adopting those regulations.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) In early 2006, most household batteries were classified by*
4 *the state as universal waste and are now prohibited from being*
5 *disposed of in solid waste landfills. Under state law, "household*
6 *batteries" are defined as including batteries made of mercury,*
7 *alkaline, carbon-zinc, and nickel-cadmium, and other batteries*
8 *typically generated as household waste, including, but not limited*
9 *to, batteries used in hearing aids, cameras, watches, computers,*
10 *calculators, flashlights, lanterns, standby and emergency lighting,*
11 *portable radios, television sets, meters, toys, and clocks. Household*
12 *batteries do not include lead-acid batteries, batteries that are sold*
13 *in a "covered electronic device," as defined in Section 42463 of*
14 *the Public Resources Code, and batteries that are not easily*
15 *removable or are not intended or designed to be removed from*
16 *the products, other than by the manufacturer.*

17 *(b) Approximately 80 percent of batteries sold in this state are*
18 *primary batteries, including such household batteries as alkaline*
19 *batteries, and these primary batteries are not covered under*
20 *existing retail take-back requirements.*

21 *(c) The requirements of the Primary Battery Stewardship Act,*
22 *as added by Section 2 of this act, apply to each individual producer*
23 *of primary batteries or primary battery-containing products, with*
24 *respect to the batteries or products that are sold, distributed, or*
25 *offered in the state by that producer. The act also provides an*
26 *option for a producer to implement this act in conjunction with*
27 *other producers in this state.*

28 *SEC. 2. Article 1.5 (commencing with Section 42445) is added*
29 *to Chapter 8 of Part 3 of Division 30 of the Public Resources Code,*
30 *to read:*

1 Article 1.5. Primary Battery Stewardship Act

2
3 42445. This article shall be known, and may be cited, as the
4 Primary Battery Stewardship Act.

5 42445.1. For purposes of this article, the following terms have
6 the following meanings, unless the context clearly requires
7 otherwise:

8 (a) “Actual direct costs” means the costs to collect, transport,
9 and recycle a discarded primary battery, including any other actual
10 environmental management costs relating to those actions.

11 (b) “Approved product” means a primary battery or a primary
12 battery-containing product that meets all of the following
13 requirements:

14 (1) The producer of that primary battery or primary
15 battery-containing product has submitted a plan to the department
16 or the producer has designated an organization that has submitted
17 a plan to the department.

18 (2) The plan specified in paragraph (1) is approved in
19 accordance with Section 42445.6.

20 (3) The program implementing the approved plan collects the
21 products subject to the plan in accordance with the collection rate
22 specified in the plan.

23 (c) “Bona fide rechargeable battery stewardship organization”
24 means a person operating a system that provides for the acceptance
25 and collection of used rechargeable batteries pursuant to the
26 Rechargeable Battery Recycling Act of 2006 (Chapter 8.4
27 (commencing with Section 42451)).

28 (d) “Brand” means a name, symbol, word, or traceable mark
29 that does either of the following:

30 (1) Identifies a primary battery and attributes the primary
31 battery to the owner or licensee of the name, symbol, word, or
32 traceable mark as the producer.

33 (2) Identifies a primary battery-containing product and
34 attributes the primary battery to the owner or licensee of the
35 primary battery-containing product as the producer.

36 (e) “Collection rate” means the percentage of primary batteries,
37 including those taken from primary battery-containing products,
38 by weight, that are collected during a calendar year by a producer,
39 or by the producers participating in an organization, as compared
40 to the average annual weight of all primary batteries that were

1 *estimated to have been sold in the state during the previous three*
2 *calendar years by that producer or those producers. Estimates of*
3 *primary batteries sold in the state may be based on a reasonable*
4 *pro rata calculation based on national sales.*

5 (f) *“Discarded primary battery” means a primary battery that*
6 *is discarded, as defined in subdivision (b) of Section 25124 of the*
7 *Health and Safety Code.*

8 (g) *“Primary battery” means a nonrechargeable battery that*
9 *weighs 2 kilograms or less, including, but not limited to, alkaline,*
10 *carbon-zinc, and lithium metal, that is typically generated as waste,*
11 *as defined in Section 25124 of the Health and Safety Code.*

12 (h) (1) *“Primary battery-containing product” means a product*
13 *that contains, or is packed with, a primary battery, including, but*
14 *not limited to, a camera, watch, calculator, flashlight, lantern,*
15 *portable radio, toy, or clock.*

16 (2) *“Primary battery-containing product” does not include any*
17 *of the following:*

18 (A) *A covered electronic device, as defined in Section 42463.*

19 (B) *A product from which a primary battery is not easily*
20 *removed or is not intended or designed to be removed, other than*
21 *by the manufacturer.*

22 (C) *A medical device, as defined in the federal Food, Drug, and*
23 *Cosmetic Act by paragraph (h) of Section 321 of Title 21 of the*
24 *United States Code, that is implanted.*

25 (i) *“Primary battery stewardship organization” or*
26 *“organization” means an organization appointed by one or more*
27 *producers to design, submit, implement, and administer a primary*
28 *battery stewardship plan pursuant to this article.*

29 (j) *“Primary battery stewardship plan” or “plan” means a plan*
30 *submitted to the department pursuant to Sections 42445.2 and*
31 *42445.3 by an individual producer or a primary battery*
32 *stewardship organization.*

33 (k) (1) *“Producer” means, with regard to a primary battery*
34 *or a primary battery-containing product that is sold, offered for*
35 *sale, or distributed in the state, one of the following:*

36 (A) *The person who manufactures the primary battery or the*
37 *primary battery-containing product, and who sells or offers for*
38 *sale that primary battery or that primary battery-containing*
39 *product, in the state, under that person’s own name or brand.*

1 (B) If there is no person to whom subparagraph (A) applies,
2 the owner or licensee of a trademark or brand under which the
3 primary battery or primary battery-containing product is sold or
4 distributed in the state, whether or not the trademark is registered.

5 (C) If there is no person to whom subparagraph (A) or (B)
6 applies, the person who imports the primary battery or primary
7 battery-containing product into the state for sale or distribution.

8 (2) “Producer” does not include either of the following:

9 (A) A person who manufactures, sells, offers for sale, or imports
10 a primary battery-containing product in the state who complies
11 with Section 42445.5.

12 (B) A person who sells, offers for sale, distributes, or imports
13 a primary battery or primary battery-containing product, if the
14 total retail value of the sale, distribution, or importation in this
15 state is less than five hundred dollars (\$500) annually.

16 (l) “Program” means the system for the collection,
17 transportation, recycling, and disposal of primary batteries that
18 is implemented pursuant to an approved primary battery
19 stewardship plan.

20 (m) “Recycling” has the same meaning as defined in Section
21 40180.

22 (n) “Retailer” means a person that offers primary batteries or
23 primary battery-containing products in a retail sale, as defined in
24 Section 6007 of the Revenue and Taxation Code, through any
25 means, including remote offerings such as sales outlets, catalogs,
26 or an Internet Web site.

27 (o) “Wholesaler” means a person that offers primary batteries
28 or primary battery-containing products for sale in this state in a
29 sale that is not a retail sale, as defined in Section 6007 of the
30 Revenue and Taxation Code, and for which the primary batteries
31 or primary battery-containing products are intended to be resold
32 in a retail sale.

33 42445.2. (a) On or before January 1, 2016, each producer
34 shall submit a primary battery stewardship plan that is in
35 compliance with Section 42445.3 to the department. A producer
36 may elect, in cooperation with one or more other producers, to
37 appoint a primary battery stewardship organization to implement
38 this article on the producer’s behalf, and the organization shall
39 submit a primary battery stewardship plan to the department on
40 or before January 1, 2016.

1 ***(b) (1) If a producer appoints a primary battery stewardship***
2 ***organization, the primary battery stewardship organization shall***
3 ***establish an advisory committee to provide input during the***
4 ***development of the primary battery stewardship plan. The advisory***
5 ***committee shall include only parties who have no financial interest***
6 ***in the collection or recycling of primary batteries and shall include,***
7 ***to the extent possible, one member from each of the following***
8 ***organizations:***

9 ***(A) Retailers.***

10 ***(B) Local governments.***

11 ***(C) Public representatives.***

12 ***(D) Haulers.***

13 ***(E) Recyclers.***

14 ***(2) If the primary battery stewardship organization is unable***
15 ***to recruit members from the organizations identified in paragraph***
16 ***(1) to participate in the advisory committee, the organization shall***
17 ***provide an explanation to the department in the plan or in the***
18 ***report required by Section 42445.10.***

19 ***(c) (1) Except as provided in paragraph (4), a producer or***
20 ***primary battery stewardship organization shall consult with***
21 ***stakeholders during the development of the primary battery***
22 ***stewardship plan and shall solicit stakeholder comments.***

23 ***(2) The producer or organization shall make all stakeholder***
24 ***meetings available using telecommunication.***

25 ***(3) This article does not require a producer or primary battery***
26 ***stewardship organization to share confidential business***
27 ***information under the Uniform Trade Secrets Act (Title 5***
28 ***commencing with Section 3426) of Part 1 of Division 4 of the***
29 ***Civil Code).***

30 ***(4) If a producer or organization determines that stakeholder***
31 ***involvement is not feasible, the producer or organization shall***
32 ***provide an explanation to the department in the plan or in the***
33 ***report required by Section 42445.10.***

34 ***42445.3. A primary battery stewardship plan shall include, at***
35 ***a minimum, all of the following:***

36 ***(a) Contact information for all participating producers.***

37 ***(b) The brands of primary batteries covered by the plan and the***
38 ***collection rate of the primary batteries collected by the producer***
39 ***or the producers participating in the organization during the***
40 ***previous calendar year.***

1 (c) *The collection rate for the primary batteries subject to the*
2 *plan in the following manner:*

3 (1) *The plan shall provide for a program that will achieve a*
4 *10-percent collection rate two years after the date the program is*
5 *implemented and a 20-percent collection rate five years after the*
6 *program is implemented.*

7 (2) *The collection rate may be revised as provided in Section*
8 *42445.4.*

9 (d) *The number and type of convenient collection points that*
10 *shall be provided by the program free of charge for consumers in*
11 *all counties of the state where each producer subject to the plan*
12 *sells, offers for sale, or distributes primary batteries or primary*
13 *battery-containing products.*

14 (1) *The plan shall allow a collection point to accept not more*
15 *than 100 primary batteries per visit by a consumer.*

16 (2) *Unless the primary battery or primary-battery containing*
17 *product is sold only by a single retailer, including a retailer*
18 *operating under the same name with more than one location, in*
19 *the state, the plan shall establish collection points in the following*
20 *manner:*

21 (A) *Except as provided in subparagraph (B), at least one*
22 *collection point shall be established in each county that is not a*
23 *rural county, where the primary batteries or primary*
24 *battery-containing products subject to the plan are sold or*
25 *distributed.*

26 (B) *If a county is a rural county, on and after January 1, 2018,*
27 *at least one collection point shall be established in that county for*
28 *every 10,000 people in that county, and, on and after January 1,*
29 *2021, at least one collection point shall be established in that*
30 *county for every 5,000 people in that county.*

31 (e) *A description of the methods that will be used to responsibly*
32 *manage discarded primary batteries to ensure that the components*
33 *of the discarded primary batteries, to the extent economically and*
34 *technically feasible, are recycled or otherwise managed*
35 *responsibly.*

36 (f) *The roles and responsibilities of key participants in the*
37 *primary battery distribution chain.*

38 (g) *The outreach procedures that will be used to provide notice*
39 *of the program to businesses, local agencies, retailers, wholesalers,*
40 *and haulers.*

1 (h) *The manner in which existing primary battery collection*
2 *points and other programs can be identified and leveraged to*
3 *achieve the required collection rates.*

4 (i) *The financing method selected to fund the implementation*
5 *of the plan to achieve the required collection rates, considering*
6 *all of the following factors:*

7 (1) *Battery chemistry.*

8 (2) *The estimated total weight of primary batteries, including*
9 *the estimated total weight of primary batteries that are contained*
10 *in primary battery-containing products, that will be sold,*
11 *distributed, or offered in the state by the producer or the producers*
12 *participating in the plan, during each calendar year.*

13 (3) *The cost of collecting, transporting, recycling and*
14 *responsibly managing the expected total weight of discarded*
15 *primary batteries collected during each calendar year.*

16 (4) *The administrative costs to the department of reviewing the*
17 *plan pursuant to this article.*

18 (5) *The cost of all other stewardship program elements,*
19 *including, but not limited to, stakeholder participation and public*
20 *outreach.*

21 (j) *Planned educational activities that will further the goal of*
22 *achieving the plan's required collection rate.*

23 (k) *At the election of the producer or primary battery*
24 *stewardship organization, provisions for the implementation of*
25 *the program in conjunction with those cities, counties, districts,*
26 *and regional agencies in whose jurisdictions the program will be*
27 *implemented. If the producer or primary battery stewardship*
28 *organization makes an election pursuant to this subdivision, the*
29 *producer or primary battery stewardship organization shall*
30 *provide, to cities, counties, districts, and regional agencies*
31 *participating in the stewardship program one or more of the*
32 *following:*

33 (1) (A) *Reasonable reimbursement for the mutually*
34 *agreed-upon, actual direct costs per unit of weight incurred by*
35 *the local agency in collecting primary batteries.*

36 (B) *The producer or organization may request an independent*
37 *audit of submitted reimbursement costs prior to making a payment*
38 *pursuant to subparagraph (A). If the independent audit confirms*
39 *the reasonableness of the reimbursement request, the audit costs*

1 *shall be paid by the producer or primary battery stewardship*
2 *organization.*

3 *(2) The location and contact information for the convenient*
4 *collection points for discarded primary batteries that are located*
5 *within the local agency's jurisdiction and that are consistent with*
6 *the plan.*

7 *(3) Products for setting up a collection point within the local*
8 *agency's jurisdiction and providing for the pickup of discarded*
9 *primary batteries collected, including, but not limited to, arranging*
10 *for the management of those discarded primary batteries.*

11 *42445.4. A producer or a primary battery stewardship*
12 *organization may petition the department to adjust the collection*
13 *rate specified in the plan. The department may grant an adjustment*
14 *to the collection rate if the department determines that*
15 *technological, ecological, cultural, economic, or other impediments*
16 *or circumstances that are beyond the control of the producer or*
17 *primary battery stewardship organization limit the ability of the*
18 *producer or organization to achieve the specified collection rate.*

19 *42445.5. (a) A person who manufactures, sells, offers for sale,*
20 *or imports a primary battery-containing product in this state shall*
21 *not be a producer for purposes this article if the person does both*
22 *of the following:*

23 *(1) Affirms to the department that the person only uses primary*
24 *batteries supplied by a producer participating in an approved*
25 *battery stewardship program.*

26 *(2) Reports to the producer specified in paragraph (1) or to the*
27 *organization in which that producer elects to join, the estimated*
28 *use of the primary batteries in the primary battery-containing*
29 *products to be sold in the state by that person, which estimate may*
30 *be based on a reasonable pro rata calculation of national sales*
31 *of the primary battery-containing products.*

32 *(b) A producer or a primary battery stewardship organization*
33 *that operates a program that covers the primary battery contained*
34 *in the primary battery-containing product of a person who,*
35 *pursuant to subdivision (a), is not a producer shall list the person*
36 *as a participant in its program, subject to any limitations or*
37 *exceptions as may be indicated by the information submitted by*
38 *the exempted person producing the primary battery-containing*
39 *product.*

1 42445.6. (a) Upon receipt of a plan pursuant to Section
2 42445.2, the department shall review the plan and determine
3 whether the plan provides for the establishment of a primary
4 battery stewardship program that includes all of the elements
5 required by Section 42445.3. As part of the plan review, the
6 department shall review the plan's financing mechanism and
7 determine whether the plan considers the factors specified in
8 subdivision (i) of Section 42445.3. In conducting a review pursuant
9 to this subdivision, the department may consult with producers,
10 primary battery stewardship organizations, retailers, and recyclers.

11 (b) A plan shall be deemed approved by the department 30 days
12 after the plan is received, unless the department, in writing, notifies
13 the producer or the organization that submitted the plan that the
14 plan is deficient and identifies specific elements of Section 42445.3
15 that were not satisfactorily addressed.

16 (c) A producer or a primary battery stewardship organization
17 is not required to provide any services to a person exempted from
18 the definition of a producer pursuant to Section 42445.5.

19 (d) The department shall make all approved primary battery
20 stewardship plans available to the public on the department's
21 Internet Web site, but shall not publish information protected under
22 the Uniform Trade Secrets Act (Title 5 (commencing with Section
23 3426) of Part 1 of Division 4 of the Civil Code). The total weight
24 of batteries collected by a program implementing an approved
25 plan is not confidential business information under that act.

26 42445.7. (a) Upon approval of the plan pursuant to Section
27 42445.6, the producer or the primary battery stewardship
28 organization shall do all of the following:

29 (1) No later than six months after the date of the approval of
30 the plan, implement the plan, including, but not limited to,
31 achieving the collection rates specified in the plan.

32 (2) Prepare and submit to the department the report required
33 by Section 42445.10.

34 (3) If a producer or primary battery stewardship organization
35 elects to implement the plan in conjunction with cities, counties,
36 districts, and regional agencies pursuant to subdivision (k) of
37 Section 42445.3, take the actions specified in that subdivision.

38 (b) A local agency that elects to participate in a program
39 pursuant to subdivision (k) of Section 42445.3 shall separate from

1 *other materials the primary batteries for collection by the producer*
2 *or primary battery stewardship organization.*

3 42445.8. (a) *Within 30 days after the approval of a primary*
4 *battery stewardship plan, and on or before March 1 annually*
5 *thereafter, the department shall post on its Internet Web site a list*
6 *of the brands of primary batteries or primary battery-containing*
7 *products that are approved products.*

8 (b) *A primary battery stewardship program is in compliance*
9 *with this article if it achieves the collection rate specified in the*
10 *plan, as provided in paragraph (1) of subdivision (c) of Section*
11 *42445.3.*

12 42445.9. (a) *On and after July 1, 2016, a producer, retailer,*
13 *or a wholesaler shall not offer a primary battery or primary*
14 *battery-containing product for sale in this state, or offer a primary*
15 *battery or primary battery-containing product for promotional*
16 *purposes in this state, unless the primary battery or primary*
17 *battery-containing product is an approved product.*

18 (b) *On or before October 1, 2016, a retailer may sell the*
19 *remaining stock of those primary batteries or primary*
20 *battery-containing products that are not approved products.*

21 (c) *The department shall not take an enforcement action*
22 *pursuant to this article on or before October 1, 2016, against a*
23 *retailer with regard to primary batteries or primary*
24 *battery-containing products that are not approved products.*

25 (d) *A producer who seeks to sell or offer for sale or promotional*
26 *purposes a primary battery or primary battery-containing product*
27 *that was not sold or offered for sale in the state before July 1,*
28 *2016, shall notify the department prior to selling or offering to*
29 *sell that primary battery or primary battery-containing product*
30 *in the state. The department shall list that producer as a new*
31 *producer on the department's Internet Web site. On or before 90*
32 *days after making that notification, the producer shall submit a*
33 *primary battery stewardship plan to the department or join an*
34 *existing primary battery stewardship organization that has an*
35 *approved plan. If the producer does not meet either of those*
36 *requirements, the producer shall not sell the primary battery or*
37 *primary battery-containing product after that 90-day period and*
38 *a retailer may sell the primary battery or primary*
39 *battery-containing product only for 120 days following the*
40 *termination of that 90-day period.*

1 (e) *This section does not require the department to conduct or*
2 *commission a compliance survey or prohibit a primary battery*
3 *stewardship organization from conducting or commissioning a*
4 *compliance survey.*

5 42445.10. (a) *On or before two years after the date of the*
6 *initial approval of a primary battery stewardship plan, and once*
7 *every year thereafter, except as specified in subdivision (e), the*
8 *producer or primary battery stewardship organization*
9 *implementing the plan shall prepare and submit to the department*
10 *a report describing the activities carried out pursuant to the plan*
11 *during the previous calendar year. The report shall include, but*
12 *is not limited to, all of the following elements:*

13 (1) *The weight of primary batteries collected by the program*
14 *in the prior year and the collection rate achieved in the prior year.*

15 (2) *A report of the estimated total sales data by weight for*
16 *primary batteries sold in the state, or the weight of primary*
17 *batteries contained in primary battery-containing products sold*
18 *in the state, for the previous three calendar years.*

19 (3) *Financial statements that detail the financing of the plan,*
20 *consistent with the requirements of subdivision (i) of Section*
21 *42445.3, except as follows:*

22 (A) *If the plan is operated by a producer that is a single retailer,*
23 *including a retailer with more than one physical location, the*
24 *report is not required to provide this information.*

25 (B) *If the producer or organization operates a program in*
26 *another state, in addition to this state, the producer or organization*
27 *may submit a financial statement that includes all of those states,*
28 *including this state.*

29 (4) *Locations and contact information for all collection points*
30 *set up by the producers covered by the plan.*

31 (5) *Examples and a description of educational materials used*
32 *to increase collection.*

33 (6) *The manner in which the collected primary batteries were*
34 *managed.*

35 (7) *An explanation of why collection targets were not met, if*
36 *applicable.*

37 (8) *Any material change to the primary battery stewardship*
38 *plan.*

39 (b) *The department shall review each report to confirm that all*
40 *report elements specified in subdivision (a) have been addressed.*

1 A report submitted on behalf of a regional or national primary
2 battery stewardship organization may include reasonable pro rata
3 estimates of the elements specified in paragraphs (2) and (3) of
4 subdivision (a). The report shall be deemed approved unless the
5 department, in writing, notifies the producer or organization within
6 30 days of receipt that the report is deficient, and identifies specific
7 elements of subdivision (a) that were not satisfactorily addressed.

8 (c) This section does not require or authorize the department
9 to publicly disclose the confidential business information of a
10 producer or primary battery stewardship organization, if the
11 information is protected under the Uniform Trade Secrets Act
12 (Title 5 (commencing with Section 3426) of Part 1 of Division 4
13 of the Civil Code). The total weight of batteries collected by an
14 approved plan is not confidential business information under that
15 act.

16 (d) The department shall make all approved reports available
17 to the public on the department's Internet Web site, except as
18 provided in subdivision (c).

19 (e) On and after three years after the initial implementation
20 date of a plan, if the collection rate for the primary batteries
21 subject to the plan meets the collection rate specified in the plan,
22 the producer or organization shall thereafter submit the report
23 required by this section every two years.

24 42445.11. (a) If the department notifies a producer or
25 organization pursuant to subdivision (b) of Section 42445.10 that
26 a report does not meet the requirements of subdivision (a) of
27 Section 42445.10, or the report confirms that the collection rate
28 or the establishment of the collection points specified in the plan
29 were not met, the department shall notify the producer or
30 organization in writing within 30 days after receiving the report.
31 The notification shall require the continued implementation of the
32 existing approved plan and shall require the producer or
33 organization to amend and resubmit the plan. The producer or
34 organization shall amend and resubmit the plan to the department
35 no later than 45 days after this notification, or no later than a later
36 date that may be agreed to by the department.

37 (b) If the producer or primary battery stewardship organization
38 does not amend and resubmit the plan pursuant to subdivision (a),
39 or if the department does not approve the amended plan, the
40 department shall, in consultation with the producer or primary

1 battery stewardship organization, determine which actions should
2 be taken to obtain approval by the department.

3 (c) The department shall not disapprove an amended and
4 resubmitted plan without providing the producer or organization
5 with notice and an opportunity to request a hearing. A producer
6 or primary battery stewardship organization whose amended and
7 resubmitted plan is disapproved may file an action for judicial
8 appeal of the disapproval. A producer participating in a plan, and
9 any wholesaler, distributor, or retailer, may continue to sell the
10 producer's primary batteries or products in the state during the
11 pendency of any appeal.

12 42445.12. (a) A producer or organization submitting a plan
13 pursuant to this article shall also pay an administrative filing fee
14 in an amount, established by the department, sufficient to cover
15 the reasonable cost of the department's plan review, but not more
16 than five thousand dollars (\$5,000).

17 (b) The Primary Battery Stewardship Account and the Primary
18 Battery Stewardship Penalty Subaccount are hereby established
19 in the Integrated Waste Management Fund.

20 (c) The administrative filing fees collected pursuant to this
21 section shall be deposited in the Primary Battery Stewardship
22 Account and shall be expended by the department, upon
23 appropriation by the Legislature, to cover the department's plan
24 review costs.

25 (d) All penalties collected pursuant to this article shall be
26 deposited in the Primary Battery Stewardship Penalty Subaccount
27 and may be expended by the department, upon appropriation by
28 the Legislature, to cover the department's costs to implement and
29 enforce this article.

30 42445.13. (a) The department may impose administrative civil
31 penalties not to exceed one thousand dollars (\$1,000) per day
32 upon a producer that is not in compliance with this article, or upon
33 a wholesaler or retailer that violates Section 42445.9. An
34 administrative civil penalty may be imposed only by the department
35 and shall not be imposed by any other state or local agency.

36 (b) A producer, wholesaler, or retailer that removes from sale
37 any primary battery or primary battery-containing product within
38 90 days of discovery that it is not in compliance with this article
39 is not in violation of Section 42455.9.

1 (c) A producer, wholesaler, or retailer that purchases a primary
2 battery or primary battery-containing product which is verified to
3 be an approved product at the time of purchase is not in violation
4 of Section 42455.9 if, at the time when the producer, wholesaler,
5 or retailer sells that primary battery or primary battery-containing
6 product, it is no longer an approved product.

7 (d) Before imposing a penalty pursuant to this section, the
8 department shall issue a compliance order to the producer,
9 wholesaler, or retailer selling the primary battery or primary
10 battery-containing product that allows 30 days from the date of
11 the compliance order to cease sales of the primary battery or
12 primary battery-containing product.

13 42445.14. (a) A producer or primary battery stewardship
14 organization that implements a plan in compliance with this article
15 and incurs in excess of three thousand dollars (\$3,000) in actual
16 direct costs for collecting, handling, recycling, or properly
17 disposing of primary batteries sold or offered for sale in the state
18 by a producer that does not operate an approved battery
19 stewardship program or does not participate in an approved
20 battery stewardship organization, may bring a civil action to
21 recover costs, damages, and fees, as specified in subdivision (c),
22 from the producer for failure to comply with this article, if that
23 producer can be identified from a brand or marking on a discarded
24 primary battery or from other information.

25 (b) (1) An action under subdivision (a) may be brought against
26 one or more producers who are not in compliance with this article.

27 (2) An action under subdivision (a) shall not commence earlier
28 than 60 days after a written notice of the organization's or
29 producer's intention to file an action has been provided to the
30 department and to the producer who is alleged to be noncompliant.

31 (3) An action under subdivision (a) shall not commence if the
32 department has commenced an enforcement action against the
33 producer who is alleged to be noncompliant and is diligently
34 pursuing that action.

35 (c) In an action under this section, the plaintiff may recover all
36 of the following amounts from a producer who has been found to
37 be noncompliant:

38 (1) The costs the plaintiff incurred in collecting, handling,
39 recycling, or properly disposing of primary batteries reasonably
40 identified as having originated from the noncompliant producer.

1 (2) *An amount of damages equal to no more than three times*
2 *those costs specified in paragraph (1).*

3 (3) *The plaintiff's attorney's fees and costs of bringing the*
4 *action.*

5 42445.15. *This article does not limit, supersede, duplicate, or*
6 *otherwise conflict with the authority of the Department of Toxic*
7 *Substances Control under Section 25257.1 of the Health and Safety*
8 *Code to fully implement Article 14 (commencing with Section*
9 *25251) of Chapter 6.5 of Division 20 of the Health and Safety*
10 *Code, including the authority of the department to include primary*
11 *batteries in its primary battery registry.*

12 42445.16. *Due to the need to provide a consistent statewide*
13 *program for the regulation of primary batteries and to protect the*
14 *public and the environment, this article fully occupies and preempts*
15 *the entire field of the stewardship of primary batteries and primary*
16 *battery-containing products. A city, county, or district, including*
17 *a chartered city or county, shall not adopt or enforce an ordinance*
18 *that regulates the disposal, collection, and recycling of primary*
19 *batteries or requires reporting by producers or primary battery*
20 *stewardship programs.*

21 42445.17. (a) *It is the intent of the Legislature that a producer*
22 *or a primary battery stewardship organization preparing,*
23 *submitting, and implementing a primary battery stewardship plan*
24 *pursuant to this article, and wholesalers or retailers who engage*
25 *in conduct authorized by this article, are granted immunity,*
26 *individually and jointly, from federal and state antitrust laws for*
27 *the limited purpose of establishing and implementing a program*
28 *and complying with the requirements of this article. It is further*
29 *the intent of the Legislature that the activities of a producer,*
30 *organization, and the wholesalers or retailers that implement and*
31 *comply with this article are not in restraint of trade, a conspiracy,*
32 *or combination thereof, or any other unlawful activity in violation*
33 *of any provisions of federal or state antitrust laws.*

34 (b) *Except as provided in subdivision (c), an action taken to*
35 *increase the recycling of primary batteries pursuant to this article*
36 *by a producer or primary battery stewardship organization that*
37 *affects the types or quantities being recycled or the cost and*
38 *structure of any return program is not a violation of either the*
39 *Cartwright Act (Chapter 2 (commencing with Section 16700) of*
40 *Part 2 of Division 7 of the Business and Professions Code), or the*

1 *Unfair Practices Act (Chapter 4 (commencing with Section 17000)*
2 *of Part 2 of Division 7 of the Business and Professions Code).*

3 *(c) Subdivision (b) shall not apply to any agreement establishing*
4 *or affecting the price of primary batteries or the output or*
5 *production of primary batteries, or any agreement restricting the*
6 *geographic area in which, or customers to whom, primary batteries*
7 *will be sold.*

8 ~~SECTION 1.— Section 42450.5 is added to the Public Resources~~
9 ~~Code, to read:~~

10 ~~42450.5.— (a) The department may adopt regulations to create~~
11 ~~an extended producer responsibility model for single-use primary~~
12 ~~household batteries.~~

13 ~~(b) The department shall seek the input of single-use primary~~
14 ~~household battery producers, local governments, environmental~~
15 ~~organizations, and other stakeholders when adopting regulations~~
16 ~~pursuant to subdivision (a).~~